Amendments to the Drawings:

The attached drawing sheet includes a replacement sheet for the original sheet including FIG. 1. In the replacement sheet, FIG. 1 is resubmitted with lighter shading so that the parts of the figure can be more easily discerned, in compliance with 37 CFR § 1.121. No new matter has been added.

Attachment: Replacement Sheet with FIG. 1

REMARKS

As noted previously, the Applicant appreciates the Examiner's thorough examination of the subject application.

Claims 1-22 are pending in the application and all of these claims were rejected in the non-final Office Action mailed 13 August 2008 on various grounds, as described in further detail below. Claims 1, 6-8, 13-15, and 19 are amended herein and new claims 23-30 are presented. No new matter has been added.

Applicant requests reconsideration and further examination of the subject application in light of the foregoing amendments and the following remarks.

Drawings

In the Office Action, the Examiner objected to the drawings, specifically noting that FIG. 1 was too dark with parts of the figure not discernable. The attached replacement sheet includes amended FIG. 1, which it is submitted is in compliance with 37 CFR § 1.121. Thus, the objection to the drawings is believed to have been overcome.

Claim Objections

In the Office Action, claims 5-6 and 12-13 were objected to because of certain informalities. More specifically, the Examiner noted that the term "the reference reflectance" lacked antecedent basis.

As a threshold matter, it is believed that the pairs of claims described were intended by the Examiner to be claims 6-7 and 13-14, as "reference reflectance" was not previously recited in claims 5 and 12.

By the present amendment, claims 6-7 and 13-14 have been rewritten to replace the term "reference reflectance" with "reflectance constant." As "reflectance constant" is recited in base claims 1 and 8 (from which claims 6-7 and 13-14 depend, respectively), it is believed that the

objection has been rendered moot.

Claim Rejections – 35 U.S.C. § 112

In the Office Action, claims 1-22 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. More specifically, the Examiner stated that in independent claims 1, 8, 15, and 19, the term "the reflectance" was used in a confusing way, as it was not clear to which recited reflectance the term applied.

By the present amendment, the independent claims of the application (claims 1, 8, 15, and 19) have been amended to recite the term "maximized SNR" in conjunction with "reflectance at a second wavelength." It is believed that such amendments remove any ambiguity as to which reflectance is referred to in the claims. Thus, Applicant requests that the rejection of claims 1-22 under 35 U.S.C. § 112, second paragraph be removed accordingly.

Claim Rejections – 35 U.S.C. § 102

In the Office Action, claims 1-4, 8-11, and 15-22 were rejected under 35 U.S.C. § 102(e) as being anticipated by (Applicant's co-owned) U.S. Patent Application Publication No. US 2006/0139649 to Howard III, which has issued as U.S. Patent No. 7,254,503 ("Howard"). Applicant traverses the rejection and requests reconsideration for the following reasons.

One requirement for a rejection under 35 U.S.C. § 102(e) is that the cited reference teach each and every limitation as arranged in the claim(s) at issue. This is not the case in this situation as will be explained.

Applicant's claimed invention is directed to precision correction of measured reflectance values for different assays or test products analyzed within the same instrument (intra-instrument) with a given light source or set of light sources. This is evident from claim 1 (representative of the independent claims of the application), which has been amended to recite the following:

1. A method of correcting reflectance values measured for different test products within a reflectance-based instrument, the method comprising the steps of:

A. for a first test product analyzed by the reflectance based instrument, determining a reflectance constant at a first wavelength for which reflectance does not substantially change with the presence of a test substance;

B. with the test product loaded with the test substance, determining a maximized SNR reflectance at a second wavelength for which signal-to-noise ratio is maximized and determining a measured reflectance at the first wavelength; and

C. determining a corrected reflectance as the product of the maximized SNR reflectance with a ratio of the reflectance constant to the measured reflectance.

[Emphasis added]

In contrast, Howard teaches techniques for correcting measured reflectance values obtained with different light sources, e.g., those used in different reflectance-based instruments (inter-instrument), to mitigate variations in actual output wavelengths for light sources that are specified as being a nominal center wavelength. See, e.g., Howard, col. 2, lines 53-57: ("provided is a system and method for correcting one or more reflectance values when a center wavelength of one or more light sources used to generate corresponding source light signals is different from a specified center wavelength for the one or more light sources.") Howard does not teach correction of measured reflectance values for different assays or test products analyzed with the same instrument (intra-instrument) with a given light source or sources. The present amendment to the claims are believed to clarify these noted differences between the claimed invention and the teachings of Howard.

Thus, Howard fails to teach (or suggest) each and every limitation as arranged in claims 1-4, 8-11, and 15-22 as amended and therefore forms an improper basis for a rejection under 35 U.S.C. § 102(e). Applicant requests removal of the rejection accordingly.

Claim Rejections – 35 U.S.C. § 103

In the Office Action, claims 5-7 and 12-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Howard, previously cited. Applicant traverses the rejection and requests reconsideration for the following reasons.

Applicant respectfully submits that the cited Howard reference should be disqualified as prior art pursuant to 35 U.S.C. § 103(c) as the subject application and the Howard reference were, at the time the invention of the subject application was made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s), i.e., the Applicant, Siemens Healthcare Diagnostics, Inc. (f/k/a Bayer Healthcare LLC). Consequently, and without acceding to any of the Examiner's allegations made for the rejection, under 35 U.S.C. § 103(c), Howard is inapplicable as a reference against the subject application. As a result, the rejection of claims 5-7 and 12-14 under 35 U.S.C. § 103(a) should be removed.

Conclusion

In view of the amendments and remarks submitted herein, Applicant respectfully submits that all of the pending claims in the subject application are in condition for allowance, and respectfully requests a Notice of Allowance for the application. If a telephone conference will expedite prosecution of the application, the Examiner is invited to telephone the undersigned. Authorization is hereby given to charge our deposit account, No. 50-1133, for any fees required for the prosecution of the subject application.

Respectfully submitted,

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Date: 03 February 2009

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